

House Bill 865

By: Representatives Jones of the 46th, Burkhalter of the 50th, Smith of the 131st, Willard of the 49th, Houston of the 170th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, relating to the control of signs and signals on the state highway system, so as to provide for certain height limitations on such signs; to allow owners of legally erected and maintained signs to obtain permits to remove vegetation from the view zones of their signs if certain specified conditions are met; to provide for procedures, fees, and penalties related to the foregoing; to provide for stages of implementation by department districts; to provide for renewal of all permits on April 1; to provide for severability; to provide for related matters; to provide for an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Part 2 of Article 3 of Chapter 6 of Title 32 of the Official Code of Georgia Annotated, relating to the control of signs and signals on the state highway system, is amended in Code Section 32-6-75, relating to restrictions on outdoor advertising signs authorized by Code Sections 32-6-72 and 32-6-73, by striking "or" at the end of paragraph (20) of subsection (a), by striking the period at the end of paragraph (21) of subsection (a) and inserting in lieu thereof a semicolon, and by adding at the end of subsection (a) two new paragraphs to read as follows:

"(22) After July 1, 2009, exceeds 75 feet in height as measured from the point that any part of the sign or its supporting infrastructure touches the ground, or from the crown of the adjacent roadway to which the sign is permitted, whichever is higher; provided, however, that signs that are not covered by a vegetation permit and preexisting signs in excess of 75 feet in height shall not be deemed nonconforming by reason of their height;
or
(23) After July 1, 2009, is erected without the sign owner providing, on or before 30 days after the completion of construction, one copy of the structural drawings of the sign

structure stamped and signed by a registered professional engineer licensed in the State of Georgia to the department for its records."

SECTION 2.

Said part is further amended by adding a new Code section to read as follows:

"32-6-75.4.

(a) As used in this Code section, the term:

(1) 'Abandoned sign' means any sign adjacent to a state-controlled route that is not structurally safe and in good repair or which has not contained a message for six consecutive months and which has not had a message displayed within 30 days after receipt of notice by certified mail from the department. The addition of a 'for rent' panel or a phone number does not qualify as a 'message' for purposes of this Code section, but advertising copy benefitting charitable, nonprofit, religious, or other noncommercial groups shall qualify.

(2) 'Beautification plan' means an agreement between the department and the outdoor advertising permit holder describing the replacement landscaping which will be installed at the work site by the permit holder, listing the type or types of trees to be planted, the size of such plantings, and the numbers of each tree type.

(3) 'Removal' or 'removed' means the elimination of trees or other vegetation from a view zone.

(4) 'Replacement landscaping' means department approved vegetation that is planted and maintained in the area of the right of way where vegetation has been removed pursuant to a vegetation permit.

(5) 'Self-promotional advertisement' means an advertisement covering more than 75 percent of at least one advertising surface of a sign and including more than simply a phone number. Copy covering only a fraction of the surface of a sign, or copy including only a phone number, shall not be a self-promotional advertisement.

(6) 'View zone' for purposes of this Code section means an area extending from the sign to the roadway which shall be angled to maximize the visibility of the sign to passing motorists but not exceed:

(A) Two hundred seventy-five feet along the right of way fence or boundary; and

(B) Five hundred feet along the edge of the roadway pavement.

(7) 'Work site' means the specific section of the right of way between the beginning and end point of the approved view zone where vegetation removal is to be performed.

(b) In accordance with the provisions of this Code section, upon submission and review of a properly executed and completed application, the department shall issue a permit for the removal of vegetation located on the right of way of any controlled highway adjacent

to a sign which was legally erected under a department permit prior to July 1, 2009, whenever such vegetation prevents an unobstructed view zone to the sign from the main traveled way of such highway.

(c) Permit requirements:

(1) No vegetation shall be removed under this Code section other than that which lies within a view zone. The conditions of vegetation removal pursuant to this Code section shall be controlled by the limitations found in Code Section 32-6-75.3.

(2) The proceeds from the sale of any vegetation removed pursuant to this Code section shall be submitted to the department and deposited in the Roadside Enhancement and Beautification Fund.

(3) No more vegetation shall be removed pursuant to a vegetation permit than is necessary to ensure that a sign has a view zone.

(4) No vegetation along the right of way of a highway on the controlled system within the view zone of a department permitted outdoor advertising sign shall be removed by any nondepartment personnel other than in accordance with this Code section.

(5) In order to obtain a vegetation permit for signs which exceed 75 feet in height, as measured from the point that any part of the sign or its supporting infrastructure touches the ground or from the crown of the adjacent roadway to which the sign is permitted, whichever is higher, the owner of the sign must agree to reduce the sign to 75 feet in height or less unless lowering is precluded by local code or regulation. The department shall have the authority to revoke the sign permit of any permit holder who does not lower the sign within 30 days of removing the vegetation unless lowering is precluded by local code or regulation. Signs which exceed 75 feet in height, as measured from the point that any part of the sign or its supporting infrastructure touches the ground or from the crown of the adjacent roadway to which the sign is permitted, whichever is higher, that are not reduced in height within such time frame shall be subject to the penalties outlined in this Code section, and the performance bond shall be forfeit. Upon completion of any project which reduces sign height by use of a new support mechanism, such as a new pole, the sign owner shall provide the department a written footer inspection from the applicable local or county or a licensed engineer.

(6) The department shall have the right to refuse to issue any vegetation permits to any person, firm, or entity which the department determines is maintaining or is allowing to be maintained any abandoned signs, until such abandoned signs are removed or brought into compliance with this part.

(7) No permit holder shall have in their inventory of signs in Georgia any sign which depicts sexually suggestive imagery, obscene material, as that term is defined in Code

98 Section 16-12-80, or material that is in direct conflict with the local jurisdiction's
99 obscenity ordinance.

100 (8) In addition to the restrictions on removal of certain trees contained in Code Section
101 32-6-75.3, no removal of any landmark, historic, or specimen tree species shall be
102 permitted under this Code section. For purposes of this paragraph, the term:

103 (A) 'Landmark tree' means a tree or group of trees that:

104 (i) Have been planted and maintained for educational purposes for more than 75
105 years;

106 (ii) Were planted as a memorial to an individual, group, event, or cause and are more
107 than 75 years old; or

108 (iii) Symbolize a historically significant individual, place, event, or contribution, as
109 recognized by a unit of government.

110 (B) 'Historic tree' means a tree or group of trees that are reasonably determined by the
111 department to be:

112 (i) Identified by a unit of government to recognize an individual or group;

113 (ii) Located at the site of a historic event and significantly impact an individual's
114 perception of the event;

115 (iii) Dated to the time of a historic event at the location of the tree, as identified by
116 a unit of government; or

117 (iv) Confirmed as the progeny of a tree that meets any of the above criteria.

118 (C) 'Specimen tree' means a hardwood tree or group of hardwood trees that is
119 determined to be in excess of 75 years of age as determined by a registered forester or
120 arborist.

121 (9) No removal of any tree planted as part of any local, state, or federal government or
122 specifically identified beautification project shall be permitted under this Code section
123 unless written approval is obtained from the sponsoring jurisdiction.

124 (10) When vegetation is removed and the department determines that no replacement
125 landscaping shall be installed in the view zone, all root masses must remain intact in
126 order to ensure there is no soil disturbance. All substantial deposits of saw dust and wood
127 chip piles created from the removal of vegetation shall be disposed of or dispersed in
128 accordance with department policies.

129 (11) The department shall deny a vegetation permit application to the extent:

130 (A) The application is for the opening of view to a sign which is illegal, in violation
131 of any of the terms of its outdoor advertising permit, or is currently involved in
132 litigation with the department;

(B) The vegetation was planted as a designated noise barrier, visual barrier, or to provide erosion control, in which case the application shall be approved only to allow cutting which will not remove such planted vegetation;

(C) The proposed removal would open views to a commercial junkyard for automotive vehicles, in which case the application shall be approved only to allow cutting which will not further expose the junkyard to motorists; or

(D) The work site is within 1,000 feet of a state-designated scenic area.

(11) Replacement landscaping:

(A) In exchange for permission to remove existing vegetation as outlined in this Code section, the outdoor advertising permit holder shall acquire, install, and maintain replacement landscaping and adhere to the policy set forth by the department in coordination with the Roadside Enhancement and Beautification Council. The vegetation fee, as prescribed in paragraph (1) of subsection (e) of this Code section, shall be offset by the costs associated with such replacement landscaping. The department shall not provide any funds to the applicant if the applicant's replacement landscaping planting and maintenance costs exceed \$4,000.00. Under no circumstances shall the total amount submitted to the Roadside Enhancement and Beautification Fund be less than \$1,000.00.

(B) The location of replacement landscaping shall be in the area of the work site from the pavement of the main traveled way to the right of way fence or boundary. Taller growing species of vegetation may be replaced with approved lower growing varieties within the limits of the work site.

(C) Replacement landscaping shall consist of the planting of trees from the list approved by the department. In coordination with the Roadside Enhancement and Beautification Council, the department shall establish such a list on or before the effective date of this Code section and it shall be subject to revision from time to time. All replacement tree plantings must be installed in accordance with the guidelines established by the department to include any applicable planting season and must be performed in accordance with any executive orders regarding planting season. The department shall differentiate trees according to preferred geographic area of the state, if any, and maximum height at maturity. For the safety of wildlife and motorists, the department shall exclude from the approved list any trees that are known to attract deer. An approved replacement landscaping plan shall require the planting of trees in a ratio of 22 trees from the department's approved list for each site where a vegetation permit is granted on the right of way. Tree species may only be approved to the extent their height at maturity will not obscure the clear view zone. All single-stemmed replacement trees shall be a minimum of six feet tall at the time of planting, and

170 multi-stemmed vegetation shall be a minimum of three feet tall. If the department
171 determines the applicant's site is not suitable for the default tree replanting plan, the
172 department shall consider the acceptance of a wildflower planting equal to two times
173 the cleared vegetation area, provided the minimal area of the wildflower plot is no
174 smaller than an area of 5,000 square feet. The costs of the wildflower planting shall be
175 paid for and maintained by the permit holder and installed during the appropriate
176 planting seasons as determined by the department and in conjunction with any existing
177 wildflower program for that area and should be located at the work site or at a more
178 suitable area to the work site as determined by the department.

179 (D) The department prior to promulgation and in coordination with the Roadside
180 Enhancement and Beautification Council shall establish a policy regarding the
181 installation and maintenance of all replacement landscaping to be installed by outdoor
182 advertising permit holders.

183 (E) All replacement landscaping must be installed promptly and in no case longer than
184 90 days after vegetation removal unless a different schedule is required pursuant to
185 department planting guidelines. Outdoor advertising permit holders shall be
186 responsible for erosion control methods as determined by the local Environmental
187 Protection Division in cases where the department's planting guidelines do not allow
188 the installation of replacement landscaping within 90 days of vegetation removal.

189 (F) The installation of replacement landscaping must follow federal, state, and local
190 watering guidelines. If such guidelines make the installation of replacement
191 landscaping unsuitable, then a vegetation permit shall still be issued, provided that the
192 outdoor advertising permit holder submits the entire amount of the vegetation fee which
193 shall be deposited in the Roadside Enhancement and Beautification Fund for roadside
194 beautification projects. In any instance where the department issues a vegetation permit
195 but determines that no replacement landscaping is required, it shall deliver as an
196 element of the annual report to be made pursuant to subsection (h) of this Code section
197 a written report describing the site and the reasons that replacement landscaping was
198 deemed unsuitable. Replacement landscaping shall be required in all instances unless
199 it is unsuitable due to geography, department-approved fixtures or paving, climatic
200 conditions, or safety concerns.

201 (G) The department may determine that the work site is unsuitable for replacement
202 landscaping based on local standards, unique terrain, or public safety concerns. In such
203 a case, a vegetation permit shall be issued, provided that the outdoor advertising permit
204 holder submits the full vegetation fee which shall be deposited in the Roadside
205 Enhancement and Beautification Fund for roadside beautification projects. Such funds

shall not be used to plant vegetation that will block or diminish motorists' view of outdoor advertising signs.

(H) The outdoor advertising permit holder has a duty to maintain the replacement landscaping for two years from the last date of installation. If the outdoor advertising permit holder fails to maintain the replacement landscaping as provided for in this Code section, the performance bond outlined in subparagraph (d)(2)(G) of this Code section shall be forfeited. If the outdoor advertising permit holder renews the permit pursuant to paragraph (3) of subsection (d) of Code Section 32-6-75.4 for any period after two years, the permit holder shall be required to maintain the replacement landscaping during the renewal term. If replacement landscaping is installed and the outdoor advertising permit holder renews such permit in subsequent years, they shall be required to enter into a maintenance agreement for the maintenance of the view zone during the renewal period.

(d) Permit application process and fees:

(1) A vegetation permit must be secured prior to performing any vegetation removal. The permit shall be effective for one year from the date of issuance. Any permitted work not completed during that year shall require the submission of a new application to complete.

(2) Permit applications for vegetation removal will be made by the outdoor advertising permit holder upon the forms prescribed and provided by the department and shall contain the signature of the outdoor advertising permit holder. A separate application must be submitted for each view zone. The application must contain all required information before a permit will be granted. The following is a list of all required information that must be submitted with the application form:

(A) The name, address, telephone number, facsimile number, and e-mail address of the outdoor advertising permit holder;

(B) The name, phone number, and address of the property owner, if easily obtainable;

(C) The sign's state permit number;

(D) A detailed site plan identifying at a minimum the following items:

(i) The requested limits of the work site for the proposed vegetation removal;

(ii) A detailed identification of the requested action, such as removal;

(iii) The proposed view zone;

(iv) The right of way line within the work site;

(v) The method by which work crews will access the right of way;

(vi) Proposed method for securing the site on a temporary basis;

(vii) The edge of the main traveled way within the work site;

(viii) A scale showing the actual distances indicated in the site plan; and

(ix) A table or key identifying vegetation or other icons indicated on the site plan;
(E) Photographic images of the sign and the existing vegetation at the work site;
(F) A certification that all work performed under the permit will be in accordance with the department's policy regarding replacement landscaping installed by the outdoor advertising permit holder; and
(G) An acknowledgment by the outdoor advertising permit holder that a performance bond in an amount adequate to ensure the completion of the installation and maintenance of the replacement landscaping and any required sign height reduction must be obtained prior to work beginning. After issuance of the vegetation permit but before any work begins, the original performance bond must be submitted to the department. Work performed without a bond in place shall violate this Code section and be subject to penalties as provided by this Code section. The performance bond shall be released upon final inspection and acceptance of the work by the department.

(3) An application fee in the amount of \$500.00 shall accompany the application, and both the application and fee shall be submitted to the department. Proceeds from initial application fees shall be retained by the department for outdoor advertising regulatory purposes. There shall be an annual renewal fee of \$50.00 if the outdoor advertising permit holder requests to remove vegetation within the original scope of the permit without the need for future applications. Renewal fees shall be deposited in the Roadside Enhancement and Beautification Fund for roadside beautification grants approved by the Roadside Enhancement and Beautification Council. Such funds shall not be used to plant vegetation that will block or diminish motorists' view of outdoor advertising signs. Renewal fees shall be due for each calendar year following the issuance of the vegetation permit and will be due within 45 days of receipt of a renewal notice from the department.

(4) Within 60 days following receipt of the complete vegetation permit application, the department shall approve or deny the application. If the application is approved, the applicant shall be issued a permit. If the application is denied, the department shall advise the outdoor advertising permit holder, in writing, of the reasons for denial. If the department fails to approve or deny such application within 60 days of receipt, \$250.00 of the application fee shall be refunded and the department shall have an additional 30 days, for a total of 90 days, to approve or deny the application. If the department fails to approve or deny such application within 90 days of receipt, the remaining \$250.00 of the application fee shall be refunded and the department shall have an additional 30 days, for a total of 120 days, to approve or deny the application. If 120 days pass without department action on a vegetation permit application, it shall be deemed approved and the permit or approval issued within five business days. If the necessary permit or

approval is not timely issued, the applicant shall be entitled to perform the work in accordance with the application materials submitted which shall constitute the permit.

(e) Vegetation fee:

(1) At least 15 days prior to vegetation removal pursuant to an issued permit, the outdoor advertising permit holder shall submit a vegetation fee in an amount equal to \$4,000.00 minus the costs associated with acquiring, installing, and maintaining the replacement landscaping which costs shall be submitted by the outdoor advertising permit holder and approved by the department. The costs and expenses associated with acquiring, installing, and maintaining replacement landscaping shall be described in the registered forester's or arborist's signed, written report submitted in conjunction with the application. No adjustment to the vegetation fee shall be made after the permit has been approved, and the total amount of such fee shall never exceed \$4,000.00.

(2) All vegetation fees shall be deposited in the Roadside Enhancement and Beautification Fund for grants approved by the Roadside Enhancement and Beautification Council for roadside beautification projects. Such funds shall not be used to plant vegetation that will block or diminish motorists' view of outdoor advertising signs.

(f) Violations:

(1) Following notice, hearing, and a finding that a person has removed vegetation in a highway right of way for purposes of outdoor advertising in violation of this Code section, a civil fine of not less than \$13,000.00 nor more than \$26,000.00, and restitution in an amount equal to the appraised value of the unlawfully removed vegetation, shall be imposed on such person. The minimum and maximum fines under this subsection shall be increased by 2 percent annually.

(2) The department or its authorized agents shall be authorized to enter upon private lands and disassemble and remove signs without civil or criminal liability therefor pursuant to an order issued in accordance with this paragraph and as provided by Code Section 32-6-96 for disassembly and removal of illegal outdoor advertising signs where such order has been upheld in any subsequent administrative or judicial appeals.

(g) Effective date:

(1) This Code section shall become effective on July 1, 2009, and shall be implemented as a three-year pilot program by adding department districts to the program in the following staggered manner:

(A) Year one, effective July 1, 2009: First and Fourth department districts;

(B) Year two, effective July 1, 2010: add Third, Sixth, and Seventh department districts; and

(C) Year three, effective July 1, 2011: add Second and Fifth department districts.

(2) As of July 1, 2012, this Code section shall become applicable to all outdoor advertising signs lawfully permitted by the department wherever located unless otherwise determined by the General Assembly. Nothing in this Code section shall supersede any applicable local rules or ordinances. The department may not deny an applicant a vegetation permit for complying with applicable local rules or ordinances.

(h) The department shall promulgate any forms or policies necessary to implement the program provided for by this Code section within 120 days of the effective date of this Code section. Prior to December 31 of each calendar year, the department shall furnish to the members of the transportation committees of both chambers of the General Assembly and to the Roadside Beautification Enhancement and Beautification Council an annual report to include: (1) the number of vegetation permit applications received by the department; (2) the number of permits issued; (3) the number of permits issued in each department district; (4) the total amount of vegetation fees collected; (5) the total amount of grants issued by the Roadside Enhancement and Beautification Council; and (6) a statement to comply with the provisions of subparagraph (c)(11)(F) of this Code section."

SECTION 3.

Said part is further amended by revising subsection (a) of Code Section 32-6-74, relating to applications for permits, fees, and renewals, to read as follows:

"(a) Applications for permits and the renewal thereof authorized by subsections (a) through (d) of Code Section 32-6-79 shall be made to the department upon forms prescribed by the department. The applications shall contain the signature of the applicant and such other information as may be required by the department and shall be verified under oath by the person, firm, or corporation making the application. ~~Permits and renewals thereof~~ shall be issued for and shall be valid only if the sign is erected and maintained in accordance with this part during the 12 month period next following the date of issuance. The fee for the initial issuance of a permit shall be \$50.00. The fee for the renewal of a permit shall be \$25.00. The money received from permit fees shall be used to help defray the expenses of administering this part, Code Section 48-2-17 to the contrary notwithstanding. Upon receipt of a properly executed application and the appropriate fee for the erection or maintenance of a sign which may be lawfully erected or maintained pursuant to this part, the department shall, within 60 days, issue a permit ~~or renewal~~ authorizing the erection or maintenance, or both, of the sign for which application was made except when a person, firm, or corporation is maintaining or allowing the maintenance of an illegal sign as provided for in subsection (f) of Code Section 32-6-79. All permits, to include vegetation permits issued pursuant to Code Sections 32-6-75.3 and 32-6-75.4, shall expire on the first day of April in the year following issuance. ~~Application for the renewal~~ Renewal of a

351 ~~permit or vegetation permit~~ shall be made to the department not more than ~~90~~ not less than
352 ~~60~~ 30 days before the expiration date of the permit for which renewal is sought. If the
353 department fails to receive the renewal application before the expiration date of the permit,
354 the department will notify the applicant that the renewal application is overdue when the
355 applicant's address is known or reasonably available to the department and shall give the
356 applicant 30 days after ~~the expiration date~~ receipt of such notice to send the department the
357 renewal application. If the applicant does not send the properly executed permit renewal
358 application and ~~the appropriate~~ fee within the specified 30 day period, the sign shall then
359 become an illegal sign. If a vegetation permit renewal application and fee is not submitted
360 within the 30 day period, the vegetation permit shall be cancelled. No permit shall be
361 renewed if the application for the renewal thereof has not been made in accordance with
362 this Code section."

363 SECTION 4.

364 In the event any section, subsection, sentence, clause, or phrase of this Act shall be declared
365 or adjudged invalid or unconstitutional, such declaration or adjudication shall affect and
366 invalidate the whole of the smallest section or subsection in which such matter appears
367 herein, but shall in no manner affect the other sections, subsections, sentences, clauses, or
368 phrases of this Act, which shall remain of full force and effect as if the section, subsection,
369 sentence, clause, or phrase so declared or adjudged invalid or unconstitutional were not
370 originally a part hereof. The General Assembly declares that it would have passed the
371 remaining parts of this Act if it had known that such part or parts hereof would be declared
372 or adjudged invalid or unconstitutional, but would not have passed any section of this Act
373 containing or constituting an invalid or unconstitutional provision.

374 SECTION 5.

375 This Act shall become effective on July 1, 2009.

376 SECTION 6.

377 All laws and parts of laws in conflict with this Act are repealed.